

STATE OF MICHIGAN
COURT OF APPEALS

In re STAMPER, Minors.

UNPUBLISHED
December 16, 2014

No. 322407
Muskegon Circuit Court
Family Division
LC No. 11-041299-NA

Before: RIORDAN, P.J., and BECKERING and BOONSTRA, JJ.

PER CURIAM.

Respondent-mother appeals as of right the May 23, 2014 order terminating her parental rights to the minor children, KRS and GAS, under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm if children are returned to parent). We affirm.

I. STATUTORY GROUNDS FOR TERMINATION

Respondent argues that the trial court erroneously found statutory grounds to terminate her parental rights to the minor children. “In order to terminate parental rights, the trial court must find by clear and convincing evidence that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met.” *In re VanDalen*, 293 Mich App 120, 139; 809 NW2d 412 (2011). “We review the trial court’s determination for clear error.” *Id.*

We find that the trial court properly terminated respondent’s parental rights pursuant to MCL 712A.19b(3)(g). MCL 712A.19b(3)(g) provides that termination is proper where “[t]he parent, without regard to intent, fails to provide proper care or custody for the child[ren] and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child[ren]’s age[s].”

When the children were taken into care in October 2011, respondent was unable to provide proper care, in relevant part, because she lacked stable housing, had placed the children in a home with people she did not know, and had exposed the children to inappropriate people. Between November 2011 and January 2014, respondent had lived in eight different residences. Between January 17 and May 23, 2014, respondent reported that she stayed in a two-bedroom home with two friends. There is no indication on the record that respondent was a party to a lease agreement with the owner of that home. After the proceeding had been open for over 30 months and she had been repeatedly told she needed to provide proper housing for her children, respondent reported that she had applied to purchase a two-bedroom mobile home and she was

approved to buy the mobile home and rent a lot in a mobile home park the day before the termination hearing. Respondent planned to purchase the mobile home on the afternoon that the final termination hearing was held. However, respondent did not provide any documentation to support that she would be able to purchase the mobile home. See *In re Trejo Minors*, 462 Mich 341, 362-363; 612 NW2d 407 (2000) (“We agree that the evidence of respondent’s inability to obtain and maintain suitable housing supports the court’s conclusion that respondent, without regard to her intent, had failed to provide proper care or custody of her children as alleged under subsection 19b(3)(g).”). Respondent had unstable employment during the proceeding and was unemployed and pursuing a worker’s compensation claim at the time of termination. Respondent reported that she had \$1,097 in savings but did not provide documentation to support this. Further, respondent indicated that she would require \$597 of that savings to purchase the mobile home and pay rent on a lot to house it. When asked about how she would pay for utilities and food, respondent did not provide a definitive answer. Respondent was unable to financially care for the children or provide them with a stable and appropriate home at the time of termination.

Respondent was also unable to provide for the children’s emotional needs at the time of termination. Respondent exposed the children to domestic violence and unstable housing before they were taken into care. The children’s therapist believed that respondent had emotionally abused the children. After the children were taken into care, they were diagnosed with Post Traumatic Stress Disorder (PTSD), neglect, Oppositional Defiant Disorder (ODD), and Attention Deficit Hyperactivity Disorder (ADHD). KRS also suffered from generalized anxiety disorder. The children required medication and therapy. At the beginning of the proceeding, respondent continued to have contact with a man who had abused her in the past. In January 2013, respondent brought a new boyfriend, who she later alleged stalked her, to a parenting time visit. KRS felt anxious and conflicted about whether to report the boyfriend’s presence because he knew the boyfriend was not permitted to attend visits. Respondent participated in some of the children’s therapy sessions. However, in November 2013, the children’s therapist asked her not to attend after determining that her participation was not “productive.” Before the January 2014 termination hearing, respondent failed to attend KRS’s medication review. Less than two months before termination, KRS was emotionally distraught after GAS reported to the therapist that a man was present at an unsupervised parenting time visit. KRS reported that respondent had told the children not to report the man’s presence. The therapist recommended that respondent only have supervised contact with the children. Respondent was unable to provide proper care and custody at the time of termination. See MCL 712A.19b(3)(g).

In addition, respondent failed to benefit from the available services. Respondent made some progress and participated in several services offered to her, but, as the trial court recognized, respondent failed to demonstrate that she benefited from those services, despite having approximately 31 months to do so. Respondent’s failure to fully benefit from the available services is evidence of her failure to provide proper care and custody. See *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014).

Contrary to respondent’s arguments on appeal, the record does not support that she would have been “able to provide proper care and custody within a reasonable time considering” the children’s ages. See MCL 712A.19b(3)(g). Although respondent indicated that she planned to purchase a mobile home on the day of the final termination hearing, she did not provide

documentation to support that she had sufficient funds to do so. Respondent did not express a clear plan regarding how she would pay for housing and care for the children in the future if her worker's compensation claim was denied or delayed. Although respondent reported that she would be able to rely on family members, she did not provide documentation to support this; nor does it appear that she relied on these family members at any time during the proceeding. Moreover, given respondent's employment history and the fact that she lacked an income at the time of termination, the record does not support that respondent would be able to ensure that the children continued to obtain medication and therapy, which they required in order to improve. Finally, although respondent made some progress, she failed to make sufficient progress to be able to provide for the children, despite having approximately 31 months to do so. The children could not wait an indefinite amount of time for respondent to make sufficient progress. See *In re Dahms*, 187 Mich App 644, 647-648; 468 NW2d 315 (1991) (holding that, because the Legislature did not intend for children to be left in foster care indefinitely, it is proper to focus on how long it will take a respondent to improve *and* on how long the involved children can afford to wait for that improvement). The trial court's finding that termination of respondent's parental rights was proper pursuant to MCL 712A.19b(3)(g) does not leave us with a definite and firm conviction that a mistake has been made. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). Because we have concluded that at least one ground for termination existed, we need not specifically consider the additional grounds upon which the trial court based its decision. *Id.* at 461.

II. BEST INTERESTS

Respondent next argues that the trial court clearly erred when making its best-interests determination. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child[ren]'s best interests before it can terminate parental rights." *In re Olive/Metts Minors*, 297 Mich App 35, 40; 823 NW2d 144 (2012); See also MCL 712A.19b(5).¹ "[W]hether termination of parental rights is in the best interests of the child must be proved by a preponderance of the evidence." *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013). We review a trial court's best interests finding for clear error. *In re HRC*, 286 Mich App at 459.

"In deciding whether termination is in the child[ren]'s best interests, the court may consider the child[ren]'s bond to the parent, the parent's parenting ability, the child[ren]'s need for permanency, stability, and finality, and the advantages of a foster home over the parent's home[.]" *In re Olive/Metts Minors*, 297 Mich App at 41-42 (internal citations omitted). It is also appropriate to consider whether the children are safe with the respondent, thriving in foster care, and whether the foster care home could provide stability and permanency. *In re VanDalen*, 293 Mich App at 141.

Here, respondent and the children lived in several different states before the children entered care. Respondent exposed the children to domestic violence before she and the children

¹ In her brief, respondent cites the old version of MCL 712A.19b(5); however the trial court properly applied the current version of that statute.

moved to Michigan. While in Michigan, respondent and the children lived in a home where domestic violence was present and in a home with occupants who had an “open” Child Protective Services case. After respondent and the children were forced to leave a homeless shelter, the children began staying the night in a home with two people that respondent did not know. After the children entered care, respondent lived with a woman who was on the central registry, and respondent continued to see a man who had domestically assaulted her in the past. Respondent also had a relationship with a man who she reported stalked her. Respondent included this man in a parenting time visit with the children and continued to rely on him for support in January 2014. See *In re VanDalen*, 293 Mich App at 141.

Although the record supports that respondent and the children were bonded and that the children wished to return to her care, the bond was not healthy for the children. See *In re Olive/Metts Minors*, 297 Mich App at 41-42. At the time of termination, 8-1/2 year-old KRS and five-year-old GAS had been diagnosed with PTSD, neglect, ODD, and ADHD. KRS also had a diagnosis of generalized anxiety disorder. Contrary to respondent’s arguments on appeal, expert testimony presented at the termination hearing established that respondent’s emotional abuse of the children traumatized them, created a great deal of anxiety, and caused them to be “hyper focus[ed]” on their environment. Further, in the months leading up to termination, KRS reported that respondent asked him and GAS not to tell anyone that a man was present during an unsupervised parenting time. Therapy was necessary in order for the children to overcome their psychological issues, and respondent’s request that the children keep secrets from the therapist interfered with the therapeutic relationship. Further, respondent’s request caused KRS to feel conflicted, heightened his anxiety, and caused him to have a strong emotional reaction after GAS reported the incident.

The children also required a caregiver who would participate in therapy with them in order to learn to properly address their psychological issues. However, respondent’s participation in therapy during the proceeding was deemed not “productive” by the therapist. It is unlikely that respondent would be able to finance the children’s required therapy and medication in the future given her history of unstable employment, lack of income at the time of termination, and inability to afford her own individual therapy at the time of termination.

At the time of termination, the children had been in care for close to 31 months and had lived in several different foster homes. They required a stable and permanent environment so that their psychological issues could improve, KRS’s difficulty with social interactions and inability to trust others could be addressed, and both children could establish their identities. See *In re Olive/Metts Minors*, 297 Mich App at 41-42. Respondent would be unable to provide the children with the stability and permanence that they required within a reasonable amount of time. At the time of termination, the children were being appropriately cared for in the home of their foster parents, who were willing to adopt them. See *In re VanDalen*, 293 Mich App at 141. The trial court did not clearly err in finding that termination of respondent’s parental rights was in the children’s best interests. *In re HRC*, 286 Mich App at 459.

Affirmed.

/s/ Michael J. Riordan
/s/ Jane M. Beckering
/s/ Mark T. Boonstra